reasonable exercise of discretion at all, this Court will not interfere.

Now in the present case what were the facts upon which the learned President was called upon to exercise his discretion in favour of the defendants? Firstly, it was urged that it is the accepted practice of the Courts to treat the return date of the summons as the date for mention only. In his grounds of decision the learned President stated that he knew of no such accepted practice. I would go further and say that, even if there was evidence of the existence of such a practice (and there was no such evidence before the learned President), such a practice could not override the express provisions of the rule as to the filing and service of the defence two days before the return date of the summons. It appears to be that there was nothing in this point. Next it was urged that the omission to file the defence in time was due to a mistake on the part of the defendants' solicitor in following what he believed to be the practice of the Courts as hereinbefore stated. As the English authorities cited to me so clearly show, the defendants would not be the first to suffer by the mistakes of their solicitor; and the principle to be deduced from these authorities is, I think, that when a Court has such a discretion to be exercised it should exercise it upon the facts of each individual case, and that while a mistake on the part of a legal adviser is a factor to be taken into consideration by the Court, it is not necessarily the decisive factor. (See the observations of Sir Wilfred Greene, M.R. in the case of *Gatti v. Shoosmith*[2]). Was the defendants' solicitor's omission to file their defence in time or to obtain consent or an order of the Court for an extension of such time sufficient cause to justify the Court in the exercise of its discretion in favour of the defendants? I think not. The language of the relevant rules present no difficulties of interpretation whatsoever. If there was genuine difficulty in obtaining instructions from the defendants as to their defence it would not have been difficult to have communicated with the plaintiff's solicitors, who have an office in Malacca, either by letter or by telephone to obtain their consent for an extension of time for filing and delivery of defence; and if such consent had been withheld there was time before the return date of the summons in which to apply to the Court for an order of extension of time. Nothing of the kind was done. No defence to the claim was at any time disclosed, although it was suggested that the defendants had a set-off in respect of that part of his claim which related to the deductions in respect of the purchase price of a motor-car. If that be the case, no injustice would be worked by the learned President's order under Order X., r. 7, because it is still open to the defendants to bring an action against the plaintiff, if so advised, to recover that sum.

In my view the learned President exercised his discretion in this case properly, and consequently this appeal fails. The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitor for the appellants: *S. Shunmugam.*

Solicitors for the respondent: *Allen & Gledhill.*

PUBLIC PROSECUTOR v. NAZARID FERNANDEZ.

[A. Cr. J. (Bellamy, J.) October 12, 1953]

[Malacca — Criminal Appeal No. 12 of 1953]

Penal Code, s. 193 — False evidence — Criminal Procedure Code, s. 123(2) — Examination of witness by police — Making false statement to a police officer.

Before a conviction can be sustained of making false statements to a police officer during the course of investigation, it must be proved that such statements were made in answer to questions put to the accused by an investigating officer.

Kandiah v. Rex[1] and **Beh Chai Eng v. Public Prosecutor**[7] followed. **Inder Singh v. Public Prosecutor**[2] dissented from.

Semble: It is well established that before a Court of the Federation of Malaya should accept as binding on it any decision of the Courts of the Colony of Singapore it should be satisfied that the law of the Colony is in **pari materia** with local law and that such a decision deals with the same problem as that which it is called upon to solve in the case in which such a decision is cited to it.

Cases referred to:—

(1) *P. Kandiah v. Rex* (1953) M.L.J. 64.

(2) *Inder Singh v. Public Prosecutor* (1940) M.L.J. 174.

(3) *Khoo Ee Liang & Ors. v. Lai Kim Tong & Ors.* (1947) M.L.J. 147.

(4) *Queen Empress v. Bhagwantia* I.L.R. 15 All. 12.

(5) *Empress v. Baikanta Bauri* I.L.R. 16 Cal. 349.

(6) *Ramamoorthy v. Public Prosecutor* (1948) M.L.J. 43.

(7) *Beh Chai Eng v. Public Prosecutor* (1950) M.L.J. 158.

CRIMINAL APPEAL.

L. A. Massie (Federal Counsel) for the appellant.

R. K. Booker for the respondent.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Bellamy, J. : — This is an appeal by the Public Prosecutor.

The respondent was, on the 30th June, 1953 tried before the Sessions Court at Malacca on the following charge :—

"That you on 17th April 1952 at Malacca in the course of an inquiry into an alleged offence of cheating by one Carvalho, intentionally stated in answer to T. Hamilton, a Superintendent of Police, that: "I saw the P.W.D. lorries and labourers dumping the gravel at the site prior to my starting the task", and that you on 29th April, 1953 at Malacca, in the course of the trial of the said Carvalho and another before the President of the Sessions Court, intentionally stated in evidence that: "I did not see any road material brought to the site..... I am sure I didn't see any of the road material brought to the site;" one of which statements you either knew or believed to be false or did not believe to be true, and thereby committed an offence punishable under section 193 of the Penal Code."

At the close of the case for the prosecution the respondent was acquitted by the learned President who took the view that he was bound by the decision of Sir Charles Murray-Aynsley, C.J. in the case of *P. Kandiah v. Rex*[1]. This was a recent decision of the High Court of the Colony of Singapore exercising its appellate criminal jurisdiction in an appeal from a District Court. In that case, where the facts were that the appellant made a statement to the police in the course of an investigation under section 123(2) of the Criminal Procedure Code (Chapter 21) of the Colony of Singapore and later, when giving evidence in the course of a criminal trial, differed materially from what he had said in the course of the investigation, it was held that as what the appellant had said was taken down in narrative form and that as it was not known what the questions were the narrative as taken down could not form the basis of a charge under section 191 of the Penal Code. But for this case, as he states in his grounds of decision, the learned President would have convicted the respondent.

The substantial ground of appeal is that the learned President erred in law in following the case of *Kandiah*[1] and that had he followed the decision in the case of *Inder Singh v. Public Prosecutor*[2], a case that was decided in 1940 in the Federated Malay States there would have been evidence upon which the respondent might have been convicted.

No point was taken before me as to the correctness of the decision in the case of *Kandiah*[1] which has not, insofar as I am aware, been questioned either in the Colony or in the Federation. The whole point in this appeal is whether a case decided in the Colony of Singapore on section 123(2) of the Criminal Procedure Code of the Colony of Singapore has any application to section 123(2) of the Criminal Procedure Code of the Straits Settlements, which is the Code of Criminal Procedure in force in the Settlement of Malacca.

It is well established that before a Court of the Federation of Malaya should accept as binding on it any decision of the Courts of the Colony of Singapore it should be satisfied that the law of the Colony is in *pari materia* with our local law and that such a decision deals with the same problem as that which it is called upon to solve in the case in which such a decision is cited to it. As Willan, C.J. succinctly observed in *Khoo Ee Liang & Ors. v. Lai Kim Tong & Ors.*[3] :—

"It is no use relying locally on a case decided on the law of the Colony of Singapore where the law of that Colony is not in pari materia with our local law."

It would be useful, I think, to set out in full the relevant and respective legislation regarding the examination of persons by the police in the course of a police investigation.

Section 123 of the Criminal Procedure Code (Chapter 21) of the Colony of Singapore provides as follows :—

"123(1) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

Section 123 of the Criminal Procedure Code of the Straits Settlements prior to the 30th December, 1952 provided :—

"123(1) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

It is plain that prior to the 30th December, 1952 the language of these two respective sections was identical.

The Criminal Procedure Code (Amendment No. 2) Ordinance, 1952 came into force on 30th December, 1952 and by section 3 of this Ordinance sub-section 2 of section 123 of the Criminal Procedure Code of the Straits Settlements was amended to read as follows :—

"(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer:

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture."

There has been no such amendment to sub-section (2) of section 123 of the Criminal Procedure Code of the Colony of Singapore which remains the same.

But a comparison of sub-section (2) of section 123 of the Criminal Procedure Code of the Straits Settlements as amended with the corresponding sub-section of the Criminal Procedure Code of the Colony of Singapore shows perfectly plainly that the opening words of each, which for the purpose of this case are the material words, remain identical, and that the only difference between the two sub-sections is, what some might think to be, an improvement in legislative drafting. But, in substance, the sub-sections remain in *pari materia.*

It will now be necessary to go shortly into the facts of the present case.

In April 1952 Mr. Thomas Hamilton, a Superintendent of Police attached to the Corruption Branch in C.I.D. Headquarters at Kuala Lumpur, was making a police investigation under Chapter XIII into certain cases of alleged cheating by overseers employed by the Public Works Department at Malacca, particularly in connection with a number of road re-surfacing jobs in the Masjid Tanah district. In the course of this investigation on the 17th April, 1952, Mr. Hamilton called the respondent before him and, having first told the respondent who he was and why he had been required to attend before him, he asked him what he, the respondent, knew about these road re-surfacing jobs in the Masjid Tanah district. The respondent made a statement the substance of which Mr. Hamilton recorded in narrative form in conformity with common police practice. Part of this recorded statement read as follows :—

"I saw the P.W.D. lorries and labourers dumping the gravel at the site prior to my starting the task."

On the 29th April, 1953, just over a year after he had made his statement to Mr. Hamilton, the respondent was called as a witness for the prosecution in the trial of one Carvalho and another before the President of the Sessions Court at Malacca, and he gave evidence on oath :—

"I did not see any road material brought to the site."

And later in his evidence when he was again questioned about this matter he repeated :—

"I am sure I didn't see any of the road material brought to the site."

These statements, which formed the subject of the charge against the respondent, are obviously inconsistent and irreconcilable. The offence charged under section 193 of the Penal Code was therefore made out, provided of course that there was satisfactory evidence that the respondent made the alleged statement to the investigating officer.

But the statement made by the respondent in the course of the police investigation formed part of the narrative recorded by Mr. Hamilton and there is no evidence to show that the words recorded, namely, "I saw the PWD lorries and labourers dumping the gravel at the site prior to my starting the task" was in answer to a question put to him by Mr. Hamilton or was volunteered by the respondent in the course of making his statement or were the actual words uttered by the respondent to the investigating officer, whether in answer to a question put to him by the investigating officer or not.

On the authority of the case of *Inder Singh*[2], the learned Mr. Deputy has stressed that this is immaterial. He has urged that it is not necessary for the prosecution to prove that the statement of a person recorded under section 123 of the local Criminal Procedure Code should be elicited and recorded in the form of question and answer and that it is sufficient if such statement is substantially an answer to one or more questions addressed to the witness before the statement is made. This was, of course, the decision in *Inder Singh's case*[2].

In that case, the police received an anonymous letter in which allegations were made that a police sergeant was accepting bribes. In the course of a police investigation into the offences alleged, a petition writer was questioned about the letter, and in consequence of what he stated, the appellant was called to the office of the investigating officer. He was asked if he had sent the anonymous letter. He denied all knowledge of it, and made the statement which was the subject of the charge. He was then charged under section 177 of the Penal Code that, being legally bound to furnish information to a public servant, furnished to a police officer as true information which he knew to be false. At the trial on this charge, the petition writer was called as a witness and stated that he had typed the anonymous letter on the instructions of the appellant who had paid him for it. The appellant gave evidence and again denied having anything to do with it. The Magistrate, believing the petition writer, convicted the appellant.

It is clear that the facts in *Inder Singh's case*[2] are very different from the facts in this case, which are on all fours with the facts in *Kandiah's case*[1]. But, there are these essential similarities, namely, (1) that, as in *Kandiah's case*[1], Inder Singh was legally bound to tell the truth by the express provision of section 112(ii) of the F.M.S. Criminal Procedure Code; and

(2) that his statement was not recorded in the form of alternate question and answer.

It is to be observed that prior to the decision in *Inder Singh's case*[2] there was no local authority on the construction of section 112(ii) of the F.M.S. Criminal Procedure Code, and the Court in that case referred to Indian authorities on section 161 of the Indian Criminal Procedure Code of 1882, which was exactly the same as section 112 of our F.M.S. Criminal Procedure Code, for guidance in the interpretation of that section. The Indian Courts, however, have not all been in agreement on the construction of this section of the Indian Criminal Procedure Code, and there is a flood of authority both ways. The learned trial Judge, in deciding as he did, preferred to follow the decision in the case of *Queen Empress v. Bhagwantia*[4]. In his judgment, at page 174, he said:—

"On appeal it was argued that the provision of law creating a legal obligation to state the truth must be strictly construed, and the case of Empress v. Baikanta Bauri[5], was cited.

It was there held that before a conviction can be sustained of making false statements to a police officer, it must be proved that such statements were made in answer to questions put to the accused by an investigating officer. This case, however, does not appear to have been followed in all the Indian Courts for, in the case of Queen Empress v. Bhagwantia[4], the Court held:—

'It is sufficient if such false statement is substantially an answer to one or more questions addressed to the witness before the statement is made.'

I prefer to follow the latter decision, and it is quite obvious in this case (the point not being raised in the Magistrate's Court) that the false statement which the appellant was alleged to have made was made in answer to one or more questions put to him by Mr. Elphinstone, and such questions he was legally bound to answer truly (section 112(ii) Criminal Procedure Code)."

On this, with the greatest respect, I have two observations to make. Firstly, the passage quoted by the learned Chief Justice in his judgment is taken from the headnote of the report and it does not appear anywhere in the judgment of Edge, C.J. and Tyrrell, J. In my view the headnote of the report, as so often happens, is misleading and does not accurately set out the decision of the Court. There, Edge, C.J. and Tyrrell, J. said at page 13:—

"The test as to whether a case comes within paragraph 2 of section 161 of the Code of Criminal Procedure, 1882, is — was a question put to the person by the police officer, and was what was stated by that person stated in answer to that question?"

Secondly, if the appellant had made in the police investigation a statement admitting that he had sent the anonymous letter to the police, and if the contents of that letter were not true, he would have exposed himself to a criminal charge for giving false information to the police. Accordingly, in my view, the appellant, in making what was found by the Magistrate to be a false statement, was protected by sub-section (ii) of section 112 of the F.M.S. Criminal Procedure Code which "allows a person not to answer truly any question which would expose him to a criminal charge". (See *Ramamoorthy v. Public Prosecutor*[6]). In my view, *Inder Singh's case*[2] was wrongly decided and should not be followed.

I respectfully agree with the decision in the case of *P. Kandiah v. Rex*[1]. I am of opinion that it was correctly decided. Thomson, J., although he expressed himself in different language, came, I think, to the same conclusion as the learned Chief Justice in *Kandiah's case*[1] in the case of *Beh Chai Eng v. Public Prosecutor*[7]. In that case he said at page 159:—

"That section (section 112 of the Criminal Procedure Code), it is to be noted, does not require a person interviewed by the Police in the course of a police investigation to make a statement the whole of which is true. It only compels him to give truthful answers to such questions as may be put to him.

In the present case the Prosecution have failed to prove that either of the statements contained in the charge were uttered by the appellant in reply to questions put to him. There is no evidence that any questions at all were put to him and though perhaps it might reasonably be inferred from the ordinary practice of the Police that some questions were put, there is no evidence whatsoever as to what these questions were or, in particular, as to whether the specific statements complained of were made in answer to questions. That being so, there was no evidence to shew that in making these statements the appellant was bound to state the truth and therefore he should not have been convicted."

On the authorities of *P. Kandiah v. Rex*[1] and *Beh Chai Eng v. Public Prosecutor*[7], by which the learned President was bound, and the facts being as they are, the respondent was, in my opinion, rightly acquitted.

For these reasons, this appeal must be dismissed.

Appeal dismissed.

Solicitors for the respondent: *Allen & Gledhill.*

In re Settlement of SHAIK SALLEH bin OBEID bin ABDAT & ANOR.; SHAIK AWAD bin MOBARAK bin MOHSIN bin ABDAT & ORS. v. SHAIK ALI bin SALLEH bin ABDAT.

[O. C. J. (Knight, J.) October 17, 1953]

[Singapore — Originating Summons No. 231 of 1952]

Settlement — Disqualification of beneficiaries — Validity of certain clauses in Settlement — Limitations or conditions — Charitable gift.

By a Settlement dated the 9th December, 1938 Shaik Salleh bin Obeid bin Abdat settled various immoveable properties in Singapore during a period until 21 years from the death of the last of a number of persons then alive. The income was as to one third to go to Wakaff and as to two thirds to various individual beneficiaries.